

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2086/Mum./2021

(Assessment Year : 2010-11)

Income Tax Officer
Ward-1, Palghar 401 404

..... Appellant

v/s

Shri Jaydeep Vasant Raut
Prop. M/s. Shri Balaji Enterprises
At & Post Borigaon, Post Bordi
Tal. Dahanu, Dist. Palghar 401 701

..... Respondent

Assessee by : Shri Rishi Patel

Revenue by : Shri Ajeya Kumar Ojha

Date of Hearing – 29/06/2022

Date of Order – 05/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 27/09/2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2010-11.

2. In its appeal, the Revenue has raised following grounds:

"1. *On the facts and in the circumstances of the case and in law, the learned CIT(A), Thane, erred in deleting the penalty of*

Rs.4,97,535, made on account of purchases made from Hawala parties.

2. The appellant prays that the order of the Ld. CIT(NFAC), may be set aside and that of the Assessing Officer be restored.”

3. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is a proprietor of M/s. Sri Balaji Enterprises, which was engaged in the business of retail trading and labour contractor of various capacities and ratings as per specifications of customers. The assessee originally e-filed its return of income on 24/05/2011, declaring income of Rs.4,41,100. Pursuant to the information received from higher authorities, re-assessment proceedings were initiated in assessee's case on the basis that the assessee has obtained bogus purchase amounting to Rs.16,29,784, from Hawala Dealers. Accordingly, vide order passed under section 143(3) r/w section 147 of the Act, the Assessing Officer made an addition of the aforesaid amount to the total income of the assessee.

4. In further appeal, the learned CIT(A) vide order dated 01/11/2018, dismissed the appeal filed by the assessee against the aforesaid order passed under section 143(3) r/w section 147 of the Act.

5. In quantum appeal against the order passed by the learned CIT(A), the Co-ordinate Bench of the Tribunal, vide order dated 17/03/2020, passed in ITA no.396/Mum./2019, granted partial relief to the assessee and restricted the addition to 12% of the alleged bogus purchase. Meanwhile, the penalty order dated 16/03/2020, was passed by the

Assessing Officer under section 271(1)(c) of the Act, wherein penalty of Rs.4,97,535, was levied on the basis that the assessee has concealed the particulars of income to the tune of Rs.16,29,784. In further appeal against the penalty order, the learned CIT(A) vide impugned order dated 27/09/2021, confirmed the levy of penalty, however, directed the Assessing Officer to re-compute the quantum of penalty by taking amount of addition after giving effect to the order of the Co-ordinate Bench of the Tribunal passed in quantum appeal. Being aggrieved, the Revenue is in appeal before us.

6. During the course of hearing, at the outset, the learned Authorised Representative ("*learned A.R*") submitted that the amount of penalty levied by the Assessing Officer under section 271(1)(c) of the Act is only Rs.4,97,535, and thus, the tax effect in Revenue's appeal is below the revised monetary limit of Rs.50 lakh applicable to appeals before the Tribunal, as per CBDT Circular no.17 of 2019, dated 08/08/2019. Further, he submitted, none of the exceptions provided in CBDT Circular no.3 of 2018, dated 11/07/2018 r/w circular F. no.279/Misc./142/2007 IT)-(Pt) dated 20/08/2018, would apply to Revenue's appeal. Thus, the learned A.R. submitted that Revenue's appeal being covered under the aforesaid Circulars is not maintainable.

7. On the other hand, the learned Departmental Representative ("*learned D.R*") submitted that the assessment in assessee's case was re-opened on the basis of information received from the Sales Tax

Department and, therefore, the present case falls within the exception provided in Para-10(e) of Circular no.279/Misc. 142/2007-ITJ (Pt), dated 20/08/2018, and accordingly the present appeal is maintainable.

8. Having considered the rival submissions and having perused the material available on record, we find that similar issue arose for consideration before the Co-ordinate Bench of the Tribunal in appeal being ITA no.6053/Mum./2019, order dated 19/04/2021, in DCIT v/s Aluvind Architectural Pvt. Ltd., wherein the Tribunal, while deciding the issue in favour of the tax payer, observed as under:-

"3. We find at the outset, the Id AR argued that penalty that is in dispute before us, falls below the monetary limit prescribed by the CBDT in its Circular No.17/2019 dated 08/08/2019 for preferring appeal by the Revenue before this Tribunal. We find that the Id. DR vehemently argued that the said case falls within the exception provided in para 10(e) of the said Circular and accordingly he argued that the appeal is maintainable. We find that the exception provided in para 10(e) of the Circular 17/2019 dated 08/08/2019 is applicable only for the quantum proceedings and the same cannot be made applicable for penalty proceedings. It is well settled that penalty and quantum assessment proceedings are distinct and separate. Accordingly, we dismiss this appeal of the Revenue by following the aforesaid Circular No.17/2019 dated 08/08/2019 and hold that the appeal of the Revenue is not maintainable."

9. Since similar submissions have been made by both the parties in the present case, wherein levy of penalty of Rs.4,97,535, is under challenge, therefore, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal, we are of the view that the tax effect on the amount disputed by the Revenue in the present appeal is below the revised monetary limit of Rs.50 lakh, as per CBDT Circular no. 17/2019, dated 08/08/2019, r/w CBDT Circular no.3/2018, dated

20/08/2018. In view of the aforesaid, Revenue's appeal deserves to be dismissed.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 05/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/09/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai